

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY MANGANIELLO,

Plaintiff,

-against-

ANSWER BY DEFENDANTS

JURY TRIAL DEMANDED

07 Civ. 3644 (HB)

THE CITY OF NEW YORK, DET. LUIS AGOSTINI, individually and as a New York City Police Detective, SHAWN ABATE, individually and as a New York City Police Detective, DEREK PARKER, individually and as a New York City Police Detective, LT. HENRY SCOTT, individually and as a New York City Police Lieutenant, P.O. ALEX PEREZ, individually and as a New York City Police Officer, P.O. MIRIAN NIEVES, individually and as a New York City Police Officer, MICHAEL PHIPPS, individually and as the Commanding Officer of the 43rd Precinct, JOHN MCGOVERN, individually and as a New York City Police Detective Sergeant, ROBERT MARTINEZ, individually and as a New York City Police Detective, GERYL MCCARTHY, individually and as a New York City Police Deputy Inspector,

Defendants.

----- X

Defendants City of New York, retired Detective Luis Agostini, retired Detective Shawn Abate, retired Detective Derrick Parker (sued herein as "Derek Parker"), retired Lieutenant Harry Scott (sued herein as "Lt. Henry Scott"), retired Police Officer Miriam Nieves (sued herein as "Mirian Nieves"), Inspector Michael Phipps, Lieutenant John McGovern, retired Detective Richard Martinez (sued herein as "Robert Martinez"), retired Police Officer Alex Perez, and retired Deputy Inspector Geryl McCarthy, as and for an answer to the complaint, respectfully allege upon information and belief as follows.

1. Deny the allegations set forth in paragraph "1" of the complaint, except admit that plaintiff purports to bring this action as stated therein.

2. Deny the allegations set forth in paragraph “2” of the complaint, except admit that plaintiff purports to bring this action and invoke the jurisdiction of this Court as stated therein.

3. Deny the allegations set forth in paragraph “3” of the complaint, except admit that plaintiff purports to bring this action in this venue as stated therein.

4. Defendants state that the allegations set forth in paragraph “4” of the complaint are not averments requiring responses.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “5” of the complaint.

6. Admit the allegations set forth in paragraph “6” of the complaint.

7. Deny the allegations set forth in paragraph “7” of the complaint, and respectfully refer this Court to the New York City Charter and New York City Administrative Code for a recitation of the relationship between the City and the New York City Police Department.

8. Deny the allegations set forth in paragraph “8” of the complaint, except admit that defendant Luis Agostini was employed as a detective with the New York City Police Department.

9. Defendants state that the allegations set forth in paragraph “9” of the complaint constitute legal conclusions to which no response is required.

10. Deny the allegations set forth in paragraph “10” of the complaint, except admit that defendant Derrick Parker was employed as a detective with the New York City Police Department.

11. Defendants state that the allegations set forth in paragraph “11” of the complaint constitute legal conclusions to which no response is required.

12. Deny the allegations set forth in paragraph “12” of the complaint, except admit that defendant Shawn Abate was employed as a detective with the New York City Police Department.

13. Defendants state that the allegations set forth in paragraph “13” of the complaint constitute legal conclusions to which no response is required.

14. Deny the allegations set forth in paragraph “14” of the complaint, except admit that defendant Harry Scott was employed as a lieutenant with the New York City Police Department.

15. Defendants state that the allegations set forth in paragraph “15” of the complaint constitute legal conclusions to which no response is required.

16. Deny the allegations set forth in paragraph “16” of the complaint, except admit that defendant Michael Phipps is employed as an Inspector with the New York City Police Department.

17. Deny the allegations set forth in paragraph “17” of the complaint, except admit that defendant Michael Phipps is the Commanding Officer of the 43rd Precinct.

18. Defendants state that the allegations set forth in paragraph “18” of the complaint constitute legal conclusions to which no response is required.

19. Deny the allegations set forth in paragraph “19” of the complaint, except admit that defendant John McGovern is employed as a lieutenant with the New York City Police Department.

20. Defendant state that the allegations set forth in paragraph “20” of the complaint constitute legal conclusions to which no response is required.

21. Deny the allegations set forth in paragraph “21” of the complaint, except admit that defendant Geryl McCarthy was employed as a Deputy Inspector with the New York City Police Department.

22. Defendants state that the allegations set forth in paragraph “22” of the complaint constitute legal conclusions to which no response is required.

23. Deny the allegations set forth in paragraph “23” of the complaint, except admit that defendant Alex Perez was employed as a police officer with the New York City Police Department.

24. Defendants state that the allegations set forth in paragraph “24” of the complaint constitute legal conclusions to which no response is required.

25. Deny the allegations set forth in paragraph “25” of the complaint, except admit that defendant Miriam Nieves was employed as a police officer with the New York City Police Department.

26. Defendants state that the allegations set forth in paragraph “26” of the complaint constitute legal conclusions to which no response is required.

27. Deny the allegations set forth in paragraph “27” of the complaint.

28. Defendants state that the allegations set forth in paragraph “28” of the complaint constitute legal conclusions to which no response is required.

29. In response to the allegations set forth in paragraph “29” of the complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

30. Admit the allegations set forth in paragraph “30” of the complaint.

31. Deny the allegations set forth in paragraph “31” of the complaint, except admit that Acosta’s death was caused by gun shot wounds to the back of head.

32. Deny the allegations set forth in paragraph “32” of the complaint.

33. Deny the allegations set forth in paragraph “33” of the complaint.

34. Deny the allegations set forth in paragraph “34” of the complaint.

35. Deny the allegations set forth in paragraph “35” of the complaint, but admit that plaintiff was transported to the 43rd Precinct.

36. Deny the allegations set forth in paragraph “36” of the complaint.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “37” of the complaint.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “38” of the complaint.

39. Deny the allegations set forth in paragraph “39” of the complaint.

40. Deny the allegations set forth in paragraph “40” of the complaint.

41. Deny the allegations set forth in paragraph “41” of the complaint.

42. Deny the allegations set forth in paragraph “42” of the complaint.

43. Deny the allegations set forth in paragraph “43” of the complaint.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “44” of the complaint.

45. Deny the allegations set forth in paragraph “45” of the complaint.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “46” of the complaint.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “47” of the complaint.

48. Deny the allegations set forth in paragraph “48” of the complaint.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “49” of the complaint.

50. Deny the allegations set forth in paragraph “50” of the complaint.

51. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “51” of the complaint.

52. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “52” of the complaint.

53. Deny the allegations set forth in paragraph “53” of the complaint, except admit that plaintiff was transported to the 43rd Precinct.

54. Deny the allegations set forth in paragraph “54” of the complaint.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “55” of the complaint.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “56” of the complaint.

57. Deny the allegations set forth in paragraph “57” of the complaint.

58. Deny the allegations set forth in paragraph “58” of the complaint.

59. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “59” of the complaint.

60. Deny the allegations set forth in paragraph “60” of the complaint.

61. Deny the allegations set forth in paragraph “61” of the complaint.

62. Deny the allegations set forth in paragraph “62” of the complaint.
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- 107. Deny the allegations set forth in paragraph “107” of the complaint.

- 108. Deny the allegations set forth in paragraph “108” of the complaint.
- 109. Deny the allegations set forth in paragraph “109” of the complaint.
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- 112. Deny the allegations set forth in paragraph “112” of the complaint.
- 113. Deny the allegations set forth in paragraph “113” of the complaint.
- 114. Deny the allegations set forth in paragraph “114” of the complaint.
- 115. Deny the allegations set forth in paragraph “115” of the complaint.
- 116. Admit the allegations set forth in paragraph “116” of the complaint.
- 117. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “117” of the complaint.

- 118. Deny the allegations set forth in paragraph “118” of the complaint.
- 119. Deny the allegations set forth in paragraph “119” of the complaint.
- 120. Deny the allegations set forth in paragraph “120” of the complaint.
- 121. Deny the allegations set forth in paragraph “121” of the complaint.
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- 129. Deny the allegations set forth in paragraph “129” of the complaint.

- 130. Deny the allegations set forth in paragraph “130” of the complaint.
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- 141. Deny the allegations set forth in paragraph “141” of the complaint.
- 142. Deny the allegations set forth in paragraph “142” of the complaint.
- 143. Deny knowledge or information sufficient to form a belief as to the truth
of the allegations set forth in paragraph “143” of the complaint.
- 144. Deny the allegations set forth in paragraph “144” of the complaint.
- 145. Deny the allegations set forth in paragraph “145” of the complaint.
- 146. Deny the allegations set forth in paragraph “146” of the complaint.
- 147. Deny knowledge or information sufficient to form a belief as to the truth
of the allegations set forth in paragraph “147” of the complaint.
- 148. Deny the allegations set forth in paragraph “148” of the complaint.
- 149. Deny the allegations set forth in paragraph “149” of the complaint.
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151. Deny the allegations set forth in paragraph “151” of the complaint.

152. Deny the allegations set forth in paragraph “152” of the complaint.

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155. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “155” of the complaint.

156. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “156” of the complaint.

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160. Deny the allegations set forth in paragraph “160” of the complaint.

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162. Deny the allegations set forth in paragraph “162” of the complaint.

163. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “163” of the complaint.

164. Deny the allegations set forth in paragraph “164” of the complaint.

165. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “165” of the complaint.

166. Deny the allegations set forth in paragraph “166” of the complaint.

167. Deny the allegations set forth in paragraph “167” of the complaint.

168. Deny the allegations set forth in paragraph “168” of the complaint.

169. Deny the allegations set forth in paragraph “169” of the complaint.

170. Deny the allegations set forth in paragraph “170” of the complaint.

171. Deny the allegations set forth in paragraph “171” of the complaint.

172. Deny the allegations set forth in paragraph “172” of the complaint.

173. Deny the allegations set forth in paragraph “173” of the complaint.

174. Deny the allegations set forth in paragraph “174” of the complaint.

175. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “175” of the complaint.

176. Deny the allegations set forth in paragraph “176” of the complaint.

177. Deny the allegations set forth in paragraph “177” of the complaint.

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179. Deny the allegations set forth in paragraph “179” of the complaint.

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189. Deny the allegations set forth in paragraph “189” of the complaint.

190. Deny the allegations set forth in paragraph “190” of the complaint.

191. Deny the allegations set forth in paragraph “191” of the complaint.

192. Deny the allegations set forth in paragraph “192” of the complaint.

193. Deny the allegations set forth in paragraph “193” of the complaint.

194. In response to the allegations set forth in paragraph “194” of the complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

195. Deny the allegations set forth in paragraph “195” of the complaint.

196. Deny the allegations set forth in paragraph “196” of the complaint.

197. Deny the allegations set forth in paragraph “197” of the complaint.

198. Deny the allegations set forth in paragraph “198” of the complaint.

199. Deny the allegations set forth in paragraph “199” of the complaint.

200. Deny the allegations set forth in paragraph “200” of the complaint, except admit that defendant Phipps is the Commanding Officer of the 43rd Precinct.

201. Deny the allegations set forth in paragraph “201” of the complaint.

202. Deny the allegations set forth in paragraph “202” of the complaint.

203. Deny the allegations set forth in paragraph “203” of the complaint.

204. Deny the allegations set forth in paragraph “204” of the complaint.

205. Deny the allegations set forth in paragraph “205” of the complaint.

206. Deny the allegations set forth in paragraph “206” of the complaint.

207. Deny the allegations set forth in paragraph “207” of the complaint.

208. Deny the allegations set forth in paragraph “208” of the complaint.

209. Deny the allegations set forth in paragraph “209” of the complaint.

210. Deny the allegations set forth in paragraph “210” of the complaint.

211. Deny the allegations set forth in paragraph “211” of the complaint.

212. In response to the allegations set forth in paragraph “212” of the complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

213. Deny the allegations set forth in paragraph “213” of the complaint.

214. In response to the allegations set forth in paragraph “214” of the complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

215. Deny the allegations set forth in paragraph “215” of the complaint.

FOR A FIRST AFFIRMATIVE DEFENSE

216. The complaint fails to state a claim upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

217. Any injuries in the complaint were caused, in whole or in part, by plaintiff’s culpable or negligent conduct.

FOR A THIRD AFFIRMATIVE DEFENSE

218. At all times relevant to the acts alleged in the complaint, the duties and functions of defendant’s officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City of New York is entitled to governmental immunity from liability.

FOR A FOURTH AFFIRMATIVE DEFENSE

219. Plaintiff provoked any incident.

FOR A FIFTH AFFIRMATIVE DEFENSE

220. Plaintiff's claims are barred, in whole or in part, because plaintiff failed to comply with all conditions precedent to suit.

FOR A SIXTH AFFIRMATIVE DEFENSE

221. Defendants have not violated any rights, privileges or immunities secured to plaintiff by the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have the defendants violated any act of Congress providing for the protection of civil rights.

FOR A SEVENTH AFFIRMATIVE DEFENSE

222. There was probable cause for plaintiff's arrest and prosecution.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

223. The individual defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

FOR A NINTH AFFIRMATIVE DEFENSE

224. Plaintiff's claims are barred, in part, by the applicable statute of limitations.

FOR A TENTH AFFIRMATIVE DEFENSE

225. At all times relevant to the acts alleged in the complaint, the individual defendants acted reasonably in the proper and lawful exercise of their discretion.

WHEREFORE, defendants City of New York, retired Detective Luis Agostini, retired Detective Shawn Abate, retired Detective Derrick Parker, retired Lieutenant Harry Scott, retired Police Officer Miriam Nieves, Inspector Michael Phipps, Lieutenant John McGovern, retired Police Officer Alex Perez, and retired Deputy Inspector Geryl McCarthy respectfully request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 27, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants City, Agostini, Abate,
Parker, Scott, Nieves, McGovern, Phipps, Martinez,
Perez, and McCarthy
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By



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SOUTHERN DISTRICT OF NEW YORK

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Defendants.

ANSWER BY DEFENDANTS

MICHAEL A. CARDOZO

*Corporation Counsel of the City of New York
Attorney for Defendants City, Agostini, Abate,
Parker, Scott, Nieves, McGovern, Phipps,
Martinez, Perez, and McCarthy
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New York, N.Y. 10007*

*Of Counsel: Hillary A. Frommer
Tel: (212) 788-0823
NYCLIS No. 2007-016404*

*Due and timely service is hereby admitted.**New York, N.Y., 200.....**..... Esq.**Attorney for*